Supreme Court, U.S.
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In The
Supreme Court of the United States

SUZETTE WILLIAMS, ANGELA CONNER,

Petitioners,

v.

MISSOURI DEPARTMENT
OF MENTAL HEALTH, ET AL.,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Under this Court's decisions in *Burlington Industries v. Ellerth*, 524 U.S. 742 (1998), and *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998), an employer is liable for sexual harassment by a supervisor. However, in the absence of a tangible adverse employment action against the employee, the employer may prevail by establishing an affirmative defense. The affirmative defense requires that the employer demonstrate both (a) that the employer exercised reasonable care to prevent and promptly to correct any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer. The questions presented are:

1. Whether the existence of a written sexual harassment policy is sufficient to establish the reasonableness of the employer's actions or at least to shift the burden of proof to the employee to demonstrate unreasonableness, or whether the defendant retains the burden for showing the reasonableness of the policy in the context of that workplace.

2. Whether and in what circumstances delay in reporting or failure to report harassment is sufficient to demonstrate that an employee acted unreasonably, or at least shift the burden of proof to the employee to demonstrate that she acted reasonably, or whether it is the defendant's burden to demonstrate that the plaintiff's delay in reporting or failure to report was unreasonable.

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STATUTE

Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-2(a) 1, 2

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is published at 407 F.3d 972 (8th Cir. 2005) and is reprinted as Appendix A (App. at 1-14) to this petition. The opinion of the United States District Court for the Western District of Missouri is unpublished and is reprinted as Appendix B (App. at 15-32) to this petition. The order of the United States Court of Appeals for the Eighth Circuit denying rehearing and rehearing en banc is unpublished and is reprinted as Appendix C (App. at 33) to this petition.

STATEMENT OF JURISDICTION

This Court has jurisdiction to review the decision of the United States Court of Appeals for the Eighth Circuit dated January 14, 2005, pursuant to 28 U.S.C. §1254. The United States Court of Appeals for the Eighth Circuit denied rehearing and rehearing en banc on July 22, 2005.

STATUTORY PROVISION INVOLVED

Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-2(a):

"It shall be an unlawful employment practice for an employer –

> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
>
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual

> of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin."

STATEMENT OF THE CASE

Suzette Williams and Angela Conner were employed by the Missouri Department of Mental Health (MDMH), at the Higginsville Habilitation Center, and were sexually harassed by their supervisor, Ronald Dale Miller. Williams and Conner sued the Missouri Department of Mental Health and Dan Thornton, the Superintendent of the Higginsville Habilitation Center, pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, et seq. Williams and Conner alleged that the sexual harassment created a hostile work environment, in violation of Title VII, and sought money damages.

The United States District Court for the Western District of Missouri, in an order dated January 30, 2004, granted the defendants' summary judgment motion. The District Court found that Williams and Conner stated a prima facie case of sexual harassment, but granted summary judgment for the defendants based on this Court's decisions in *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998), and *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998). The District Court concluded that the defendants sufficiently prevented and remedied the sexual harassment, and that Williams and Conner failed to take advantage of the preventative and remedial opportunities provided by MDMH. (App. at 24-31).

Williams and Conner appealed to the United States Court of Appeals for the Eighth Circuit, which affirmed the District Court's grant of summary judgment for the defendants. (App. at 4-14). Williams and Conner sought

rehearing and rehearing en banc in the Eighth Circuit, which was denied on July 22, 2005. (App. at 33).

STATEMENT OF THE FACTS

Both Suzette Williams and Angela Conner were employed by MDMH as level one Developmental Assistants to provide direct patient care at the Higginsville Habitation Center. In March and April of 2000, they were assigned to a residential building named "Crestview II." (R. 000345-6).

Ronald Dale Miller ("Miller") was employed by MDMH as a level two Habilitation Specialist at the Higginsville Habilitation Center ("HHC") from April 12, 1999 until April 10, 2000. (R. 000344-5). In this role, he was the supervisor of Williams and Conner in March and April 2000 at Crestview II. (R. 000345).

Sexual Harassment of Suzette Williams

Between March 6 and April 6, 2000, on at least 12 separate occasions, Williams worked on a shift where Miller was her supervisor. (R. 000352). During this period, Miller repeatedly sexually harassed Williams. The first incident occurred while Williams was alone in the laundry room at Crestview II. Miller walked in, pulled down his pants fully exposing his genitals, and said to Williams, "Man, look how hard it is." (Add. P.18; R. 000308, lines 7-25). Miller exposed himself to Williams again that evening while she was with clients, forcing her to remove the clients so as not to upset them. (Add. P.19; R. 000309, lines 4-23). On a later occasion, Miller appeared in the doorway of a client's room and exposed himself to both Williams and the client. (Add. P.20; R. 000310, lines 8-20). Another time, while Williams sat with two clients, Miller approached Williams and pulled open the neck of her blouse

to look down at her breasts. (Add. P.21; R. 000311, lines 11-24). On another occasion, Miller asked Williams to go with him to the copy machine and while there he touched Williams' breasts and once again exposed his genitals. (Add. P.22-23; R. 000312, lines 24-25; 000313, lines 1-5). Miller purposely rubbed against Williams, at times grabbing her buttocks or breasts, on at least a dozen occasions. (Add. P.24-5; R. 000314, lines 24-25; 000315, line 1).

As a child, Williams was seriously sexually abused by individuals with whom she had close, consistent contact. The abuse spanned six years and the adults who abused her threatened to harm her if she reported it. When Williams attempted to notify her parents of the abuse, they refused to believe her. This prior trauma influenced Williams' decision not to report Miller's consistent harassment at an earlier time. (R. 000300, line 17 to 000306, line 18). Williams felt safe enough to report the series of incidents only when accompanied to MDMH with her teenage son. (R. 000307, lines 3-17).

After the harassment, Williams was diagnosed with multiple psychiatric conditions, including major depression, severe Post Traumatic Stress Disorder, Generalized Anxiety Disorder and Panic Disorder with agoraphobia. (R. 000354). Williams testified that she failed to notify anyone of the harassment because she was "embarrassed," "shocked," and was fearful of both her own feelings and her family's reaction. (R. 113, lines 11-19). The evening Williams reported the harassment, she was involved in a serious automobile accident and was unable to return to work for several days. (R. 000348-9).

Sexual Harassment of Angela Conner

Between March 1 and April 9, 2000, Angela Conner worked with Miller on at least 12 separate occasions. (R. 000319, lines 16-20). Miller sexually harassed Conner